IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.MC.No. 3145 of 2007()

CRRP.90/2004 of II ADDL.SESSIONS COURT, ERNAKULAM
MC.35/2000 of SUB DIVISIONAL MAGISTRATE, FORT KOCHI

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PETITIONER/PETITIONER/RESPONDENT:

T.P.KURIAN S/O.PAULOSE, AGED 68 YEARS,
KUREEKKADU, ERNAKULAM DIST.

BY ADV. SRI.PAUL K.VARGHESE

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED
BY THE GOVERNMENT PLEADER
HIGH COURT OF KERALA
ERNAKULAM.

2. YESODHAMMA, AGED 57 YEARS
THERVELIL HOUSE,KUREEKKAD,
ERNAKULAM DISTRICT.

R1 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3145 of 2007

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Dated this the 11th day of October, 2007

O R D E R

The petitioner has suffered an order under Section 138 Cr.P.C. He allegedly had a well in his property. Instead of constructing a separate septic tank, he found it convenient to convert the existing well into a septic tank. He allegedly started using the sell as the septic tank. This allegedly polluted the neighbouring well. In the adjoining property there is a temple. In that property there is a well also. Water from the well is used by the members of public for activities in connection with the temple. The water from this well was used as 'theertham' in the temple. The local people complained that the water in the well of the temple was polluted.

2. A conditional order under Section 133 Cr.P.C. was passed by the Sub Divisional Magistrate. Enquiry was conducted. Witnesses were examined. The Sub Divisional Magistrate came to the conclusion that the conditional order was liable to be confirmed. Accordingly the impugned order was passed. The matter was challenged in revision before the Sessions Court and the Sessions Court, by the impugned order in revision, upheld the order of the Sub

Divisional Magistrate. Claiming to be aggrieved by the orders, the petitioner has come to this Court with this Crl.M.C.

3. The learned counsel for the petitioner raises various contentions. He contends that there is no pollution. He contends that there are nearer septic tanks to the well of the temple and in these circumstances the objection raised against the petitioner's septic tank is unjustified. The well is not used by the members of the public. The finding of facts entered are incorrect. The petitioner is not even permitted to make a proper septic tank and use the same. In these circumstances invoking the powers under Section 482 Cr.P.C. both the impugned orders may be set aside, it is prayed.

4. I must alertly remind myself of the nature, quality and contours of the jurisdiction under Section 482 Cr.P.C. I am at the third tier litigation, it has to be noted. The jurisdiction which is sought to be invoked is the extra ordinary inherent jurisdiction. Such jurisdiction is not to be invoked as a matter of course. Satisfactory, compelling and exceptional reasons must be shown to exist to justify the invocation of such jurisdiction. Has there been abuse of process of the court? Has there been failure/miscarriage of justice? These are the crucial questions to be considered.

5. Having gone through the relevant inputs, I find absolutely no justification in the prayer for invocation of the jurisdiction under Section 482 Cr.P.C. The finding of fact and law are found by me to be absolutely satisfactory and acceptable. No failure of justice is seen to result. I am, in these circumstances, satisfied that the impugned order does not warrant any interference invoking the powers under Section 482 Cr.P.C.

5. The learned counsel for the petitioner finally submits that atleast the petitioner's option to construct a proper septic tank in his property may be protected. The petitioner has only a three cents plot and the petitioner if he wants to construct a proper septic tank in the place where the well now stands, that option may not be curtailed. It is for the petitioner to take appropriate steps to construct a proper septic tank and thereafter to apply for permission to use the septic tank. When such application is made, appropriate orders shall be passed by the Sub Divisional Magistrate.

6. With the above observations this Crl.M.C. is dismissed.

(R. BASANT)
Judge

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